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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,263	04/15/2004	Helmut Bucksch	5010.1002	8310
23280	7590	05/23/2005	EXAMINER	
DAVIDSON, DAVIDSON & KAPPEL, LLC 485 SEVENTH AVENUE, 14TH FLOOR NEW YORK, NY 10018			REIS, TRAVIS M	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 05/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

10/825,263

Applicant(s)

BUCKSCH, HELMUT

Examiner

Travis M. Reis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 12-20 is/are rejected.
- 7) ☒ Claim(s) 10 and 11 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>20040415</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claim 2 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. In this case, it is not clear how the limitation "wherein the total filling quantity is larger than a total volume of the vessel" since once a container is filled to its total volume, it cannot be filled more.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 2, 12, 15, 16, 18, & 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Jacobs et al. (U.S. Patent 6736536).

Jacobs discloses a fluid container (12) comprising a vessel (13) capable of holding a fluid (34); a marker element (44); and a filling scale element (col. 4 lines 7-8) including a scale configured to indicate a total filling quantity of the fluid; wherein the marker element and the scale element are adjustable relative (Figures 3A-3E) to each other so as to enable an adding up of amounts of fluid so as to indicate the total filling quantity of the fluid, the marker

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element and the scale element being detachably disposed relative to each other (Figure 1A) by a magnetic force provided by the marker element, coated in plastic (col. 8 line 48); wherein the scale element and the marker element include respective profiles adapted to each other and are detachably connected with each other via mechanical connection (Figure 2A); the marker element including a projection and the scale element including a groove to receive the projection in snap-in fashion (Figure 2B & 3A-3E).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 2, 4, 7, 8, 12-17, 19, & 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burke et al. (U.S. Patent 4550602) in view of Thomas (FR 2543676 A1).

Burke et al. discloses a fluid container (10) comprising a vessel (16) capable of holding a fluid; a marker element (40); and a scale element (19) including a filling scale configured to indicate a total filling quantity of the fluid; wherein the marker element and the scale element are adjustable relative to each other (Figure 4) so as to enable an adding up of amounts of fluid so as to indicate the total filling quantity of the fluid; the marker element includes a rotary element (21, 22) capable of rotating around the vessel; the scale element is disposed on the vessel (Figure 1); wherein the scale element and the marker element include respective profiles adapted to each other and are detachably connected with each other via mechanical connection (Figure 4); the scale element including a projection (32) and the marker element including a groove (24) to receive the projection in snap-in fashion (Figure 2).

Burke et al. do not disclose the marker element and the scale element being

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detachably disposed relative to each other by a plastic coated magnet in the marking element and the vessel including a plastic coated iron backing disc.

Thomas discloses a liquid level position indicator with a permanent magnet (10) and indicator element (16) with an iron disc (14) (Figure 1). Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to add the magnet and disc disclosed by Thomas to the marker element and vessel disclosed by Burke et al. in order to provide a stronger connection when the two elements are together.

7. Claims 1, 3, 5, 6, & 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goertzen (U.S. Patent App. Pub. 2003/0192468) in view of Hanlon UDP 6244456).

Goertzen discloses a fluid container comprising a vessel (14) capable of holding a fluid; a marker element (16); and an elastic scale element including a scale (10); wherein the marker element and the scale element are adjustable relative to each other, wherein the scale element includes a rotary element capable of rotating around the vessel; the scale element is disposed on the vessel (Figures 1-3). Furthermore, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed (i.e. "configured to indicate a total filling quantity of the fluid," & "so as to enable an adding up of amounts of fluid so as to indicate the total filling quantity of the fluid") does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. **Ex parte Masham**, 2 USPQ2d 1647 (1987).

Goertzen does not disclose the marker element and the scale element being detachably disposed relative to each other by a magnet in the scale element.

Hanlon discloses an identifiable beverage container (10) with an indicator (26) (Figure 3) attached by magnetic means (col. 3 lines 64-65). Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to add the magnetic

fastening means disclosed by Hanlon to the container and scale disclosed by Goertzen in order to form a more secure connection.

Allowable Subject Matter

8. Claims 10 & 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. The following is a statement of reasons for the indication of allowable subject matter:

With reference to claims 10 & 11, the prior art of record does not disclose or clearly suggest a fluid container the scale element include a metal strip affixed to the vessel and having a scale thereon configured to indicate the total filling quantity, and the marker element including a magnet, in combination with the remaining limitations in the claims.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hayes discloses a measuring vessel (U.S. Patent 388677). Burton discloses a medicine dose indicator (U.S. Patent 675364). Kirkland discloses a flexible collapsible container with liquid level indicating device (U.S. Patent 4639251). Woessner discloses an indicator device for collapsible fluid container (U.S. Patent 3777697). Al-Harbi discloses an infant bottle timer apparatus (U.S. Patent 4860684). Geschwender et al. discloses a rain gauge (U.S. Patent 5038606). Chen discloses a mug with swivel rings (U.S. Patent 5400907). Nordberg et al. discloses a device for counting and measuring liquid consumption (U.S. Patent 5607078). Bayer discloses a dosing container (U.S. Patent 6575336).

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Travis M. Reis whose telephone number is (571) 272-2249. The examiner can normally be reached on 8--5 M--F.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for all communications.

Travis M Reis
Examiner
Art Unit 2859

tmr
May 12, 2005



Diego Gutierrez
Supervisory Patent Examiner
Technology Center 2800

CHRISTOPHER W. FULTON
PRIMARY EXAMINER